



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
R. KEVIN CLINTON
COMMISSIONER

STEVEN H. HILFINGER
DIRECTOR

BILL ANALYSIS

BILL NUMBERS: SB 43 (S-1) and SB 44 (S-1)
TOPIC: Residential Mortgage Fraud
SPONSOR: Senator Tupac Hunter
CO-SPONSORS: None listed
COMMITTEE: Banking and Financial Services
Analysis Done By: Office of Financial and Insurance Regulation (OFIR)
September 14, 2011

POSITION

The Administration supports this legislation.

PROBLEM/BACKGROUND

Mortgage fraud is a material misstatement, misrepresentation, or omission on a loan application, relied upon by an underwriter or lender to fund, purchase or insure a loan. There are two categories of mortgage fraud: fraud for property and fraud for money. Although there is no centralized reporting mechanism for gathering mortgage fraud complaints or investigations, there are numerous regulatory, industry, and law enforcement agencies that collaborate to share information they possess to assess the current trends in mortgage fraud.

According to the Federal Bureau of Investigation (FBI), mortgage fraud increased 71 percent from fiscal year 2008 to fiscal year 2009. The total dollar amount of mortgage fraud loss is unknown. First American CoreLogic did a study representing 97 percent of all United States properties and estimated that \$14 billion in fraudulent loans were originated in 2009 (7.5 billion in FHA loans and 6.5 billion in conforming loans).

Despite small improvements in various economic sectors, mortgage fraud continues to increase despite the increase in government-mandated scrutiny and programs to

increase mortgage fraud awareness. Prominent mortgage fraud schemes include the use of straw buyers, identity theft, silent seconds, land trusts and shell companies. There are many fraudulent loan documents including but not limited to forged application, verifications of employment and proof of income. Mortgage fraud is also found in the form of double sold loans to secondary investors, leasebacks, and inflated appraisals.

According to the FBI, the mortgage fraud perpetrators are industry insiders, including mortgage brokers, lenders, appraisers, underwriters, accountants, real estate agents, settlement attorneys, land developers, investors, builders, and bank and trust account representatives. The Mortgage Loan Fraud Suspicious Activity Report (MLF SAR) identified over half of MLF SAR subjects in the 2010 third quarter as borrowers.

An analysis of available law enforcement and industry data indicates that Michigan continues to be one of the top states for mortgage fraud. It has been listed in several of the 2009 FBI top 10 lists: same day property flips; 30 day property flipping; mortgage fraud across all originations; activity based on fraudulent loan applications; Fannie Mae's list based on significant misrepresentations; the number of foreclosures filings per housing unit; and FBI field division's report of the greatest variety of mortgage fraud.

DESCRIPTION OF BILL

Senate bill 43 (S-1) amends 1931 PA 328, the Michigan Penal Code, by adding section 219D. A person is guilty of a felony and in violation of this section if the person knowingly:

- with intent to defraud or conspire to defraud, makes false statements, misrepresentations or non-disclosures of a material fact during the mortgage lending process.
- receives, attempts to receive or conspires to receive any proceeds or any other money in connection with the violations in the mortgage lending process.
- files, causes to be filed, or conspires to be filed with the register of deeds of any county of this state any document involved in the mortgage lending process that contains a deliberate material misstatement, misrepresentation, or omission.
- conspires with a person who knowingly fails to disburse funds in accordance with a loan commitment made in connection with the mortgage lending process.

If a person is found guilty of a felony in connection with the mortgage lending process, the punishment will be imprisonment for not more than 15 years or a fine of not more than \$100,000.00, or both. If the loan value stated on documents used in the mortgage lending process exceeds \$100,000.00, the punishment will be imprisonment for not more than 20 years or a fine of not more than \$500,000.00, or both.

A person is guilty of residential mortgage fraud if they knowingly use, conspire or facilitate the use of a false statement, misrepresentation made by another person concerning a material fact or deliberately uses or facilitates the use of another person's concealment or failure to disclose a material fact during the mortgage lending process.

Each of the above violations constitutes a separate offense.

In determining venue for a prosecution, a violation is considered to have been committed in the county in which the residential property for which the mortgage loan is obtained or sought is located, in the county in which an owner of the property for which the mortgage loan was obtained or sought resides, or in any county in which a material act was performed in furtherance of the violation.

Property of any kind used or intended for use in the course of, derived from, or received in connection with a violation of this section by the person that violated this section is subject to forfeiture.

SB 43 was amended to address the issue of responsibility of a defendant in reference to written policy as it pertains to an employee's and agent's activities. The defendant must demonstrate it had and continues to enforce a written policy and has communicated the written policy and the consequences for policy violations. This amended version provides for an affirmative defense if a defendant had in force at the time of the violation and continues to have in force the following:

- written policy prohibiting conduct by employees and agents that would be a violation of this section;
- penalties or discipline for violations;
- a process for education of employees and agents concerning the policy and consequences of a violation;
- criminal history checks before employing or engaging an employee or agent;
- a requirement not to employ or engage someone who had been convicted of a crime involving fraud.

The mortgagee may within 6 months of the date of the conviction request a court order invalidating the residential mortgage and other involved documents. The victim is required to record a certified copy of this order and a copy of the invalid residential mortgage in the office of register of deeds. Before this order is recorded, the victim of the residential fraud shall provide written notice to the residential mortgage lender and any successors of the lender.

Senate bill No. 44 (S-1) amends 1927 PA 175, the Code of Criminal Procedure by amending section 16l of Chapter XVII, as amended by 2005 PA 171.

Value of money or property	Felony Class	State Maximum Sentence
Residential mortgage fraud violation involving loan value of \$100,000 or less	Class C	15 years
Residential mortgage fraud violation involving loan value of \$100,000 or more	Class B	20 years

This amendment would also change 750.217c (3) by adding - subsequent conviction- to this class H felony which carries a 2 year State maximum sentence for impersonating a public officer or employee.

SUMMARY OF ARGUMENTS

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The bills are intended to provide criminal prosecutors with stronger and more appropriate tools to charge and prosecute mortgage and other types of fraud. The establishment of the crime of "Residential Mortgage Fraud" in SB No. 43 (S-1) will provide a less arduous process for OFIR to take action under our consumer finance laws against a person, who has knowingly made, caused to be made, or used another's false statements or misrepresentations during the mortgage lending process.

Con

None

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bills as follows:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: None

Revenue: None

Comments: These bills will have little direct regulatory impact on OFIR.

(b) To the Department of Licensing AND Regulatory Affairs: None

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan:

Budgetary: The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$35,000.

Revenue: There are no data indicating how many offenders would be convicted of mortgage loan fraud in an amount that would be subject to the proposed penalties.

Comments:

(d) To Local Governments within this State: All local governments within Michigan that bring charges under this section of the Penal Code would be impacted.

Comments:

OTHER STATE DEPARTMENTS

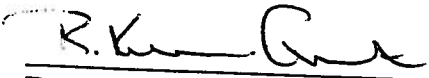
Department of Corrections

ANY OTHER PERTINENT INFORMATION

Senate bill number 44 is tie-barred to SB No. 43.

In SB 44, residential mortgage fraud violation involving a loan value of \$100,000 or less was a class D felony. The substitute changes it to a Class C felony.

ADMINISTRATIVE RULES IMPACT



R. Kevin Clinton
Commissioner

9-14-11

Date



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GOVERNOR

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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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BILL ANALYSIS

BILL NUMBER: SB 249

TOPIC: Crimes; fraud; value thresholds for crimes of false pretenses

SPONSOR: Booher

CO-SPONSORS: Senators Richardville, Marleau, Nofs, Pappageorge, Hunter, Hansen, Rocca and Gleason

BILL NUMBER: SB 250 (S-1)

TOPIC: Criminal procedure; sentencing guidelines; sentencing guidelines for crime of false pretenses; revise to reflect increased penalties

SPONSOR: Senator Booher

CO-SPONSORS: Senators Richardville, Marleau, Nofs, Pappageorge, Hunter, Hansen, Rocca and Gleason

BILL NUMBER: SB 251

TOPIC: Criminal procedure, statute of limitations; certain crimes relating to real property; revise statute of limitations

SPONSOR: Senator Nofs

CO-SPONSORS: Senators Richardville, Marleau, Booher, Pappageorge, Hunter, Hansen, Rocca and Gleason

COMMITTEE: Banking and Financial Services

Analysis Done By: Office of Financial and Insurance Regulation (OFIR)

September 13, 2011

POSITION

The Administration supports this legislation.

PROBLEM/BACKGROUND

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An analysis of available law enforcement and industry data indicates that Michigan continues to be one of the top states for mortgage fraud. It has been listed in several of the 2009 FBI top 10 lists: same day property flips; 30 day property flipping; mortgage fraud across all originations; activity based on fraudulent loan applications; Fannie Mae's list based on significant misrepresentations; the number of foreclosures filings per housing unit; and FBI field division's report of the greatest variety of mortgage fraud.

DESCRIPTION OF BILLS

Senate bill 249 amends 1931 PA 328, the Michigan Penal Code, by amending section 218, as amended by 2004 PA 154. The Penal Code prescribes penalties for a person convicted of the intent to defraud or cheat or use false pretense during a mortgage related transaction to obtain money or personal property for personal benefit.

Value of Money or Property	Offense	<u>Maximum Sentence Imprisonment / Fine or both</u>
\$20,000 or more but < \$50,000	Felony	*Not more than 15 yrs / Not more than \$15,000 or 3 times the value which ever is greater
\$50,000 or more but < 100,000	Felony	**Not more than 15 yrs / Not more than \$25,000 or 3 times the value which ever is greater
\$100,000 or more	Felony	***Not more than 20 yrs / Not more than \$30,000 or 3 times the value which ever is greater

*The guidelines apply if the person has had two or more prior convictions involving value or money of \$1,000 or more but < \$20,000.

**The guidelines apply if the person has had two or more prior convictions involving value or money of \$20,000 or more but < \$50,000.

***The guidelines apply if the person has had two or more prior convictions involving value or money of \$50,000 or more but < 100,000.

Senate bill 250 (S-1) amends 1927 PA 175, the Code of Criminal Procedure by amending section 16l of chapter XVII, as amended by 2005 PA 171. The amended chapter would enumerate a description of the value of the money or property involved in the mortgage fraud, the felony class and the State's maximum sentence. It includes a graduated sentencing structure that imposes more serious penalties for greater values of money or property, or for repeat convictions.

Value of money or property	Felony Class	State Maximum Sentence
False pretenses involving \$1,000 or more but < \$20,000 or \$200 or more but < \$1,000 with prior conviction.	Class E	5 years
False pretenses involving \$20,000 or more but < \$50,000 or \$1000 or more but < \$20,000 with prior conviction.	Class C	15 years
False pretenses involving \$50,000 or more but < \$100,000 or \$20,000 or more but < \$50,000 with prior conviction.	Class C	15 years
False pretenses involving \$100,000 or more or \$50,000 or more but < \$100,000 with prior conviction.	Class B	20 years

The above amendments will not take place unless SB 249 takes effect.

Senate bill 251 amends 1927 PA 175, the Code of Criminal Procedure, by amending section 24 of chapter VII, as amended by 2005 PA 35.

This amendment allows an indictment to be found and filed for false pretenses involving real property, forgery or uttering and publishing of an instrument affecting an interest in real property, or mortgage fraud. It may occur within 10 years after the offense was committed or within 10 years after the instrument affecting real property was recorded, whichever occurs later.

SUMMARY OF ARGUMENTS

Pro The bills are intended to provide criminal prosecutors with stronger and more appropriate tools to charge and prosecute mortgage and other types of fraud. The Code includes a graduated sentencing structure that imposes more serious penalties for greater values of money or property or for repeat convictions.

Con

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bill as follows:

- (a) To the Office of Financial and Insurance Regulation:

Budgetary:

Revenue:

Comments: These bills will have little direct regulatory impact on OFIR.

- (b) To the Department of Licensing and Regulatory Affairs: None

Budgetary:

Revenue:

Comments:

- (c) To the State of Michigan:

Budgetary: The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$35,000.

Revenue: There are no data to indicate how many offenders would be convicted of mortgage loan fraud in an amount that would be subject to the proposed penalties.

Comments:

- (d) To Local Governments within this State: All local governments within Michigan would be impacted that bring charges under this section of the Penal Code.

Comments:

OTHER STATE DEPARTMENTS

The Department of Corrections.

ANY OTHER PERTINENT INFORMATION

SB 250 (S-1) is tie-barred to SB 249.

SB 250 (S-1), amends the class of the crime committed involving property under MCL 750.218(7) to a Class B felony.

ADMINISTRATIVE RULES IMPACT



R. Kevin Clinton
Commissioner

9/14/11

Date